United States Court of Appeals

for the Second Circuit



BRIEF FOR APPELLANT

76-4216

76-4216

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-4216

IRVING I. RUSOFF and PERLE P. RUSOFF, ROBERT STRICKMAN and ROSE STRICKMAN, WILLIAM W. SUITT and KATHRYN S. SUITT, ROBERT S. RAUM and RUTH RAUM, IRVING I. RUSOFF and PERLE P. RUSOFF,

Appellants,

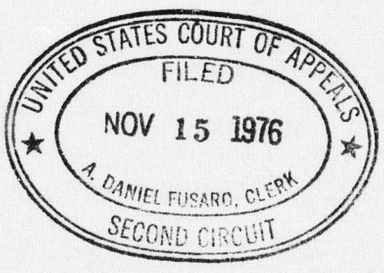
v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

ON APPEAL TO REVIEW DECISIONS OF THE UNITED STATES TAX COURT

BRIEF FOR APPELLANTS



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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-4216

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Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

BRIEF FOR APPELLANTS

Statement of Issues Presented for Review

I. Were 1967 transfers by Robert S. Raum, Irving I. Rusoff, Robert Strickman and William W. Suitt of 50% of their respective interests in the Strickman Cigarette Filter to Columbia University "gifts" which constituted charitable contributions within the meaning of Internal Revenue Code §170?

II. In the alternative, if said transfers were "sales", did Columbia receive more than it "bought" and, if so, were the respective excess transfers "bargain sale" charitable contributions under Internal Revenue Code §170?

Statement of the Case

This appeal involves Federal income tax liabilities determined by the United States Tax Court in the following amounts:

Appellants	Years	Deficiencies
Irving I. Rusoff ("Mr. Rusoff") and Perle P. Rusoff	1967	$1,184.97
	1968	1,999.60
Robert Strickman ("Mr. Strickman") and Rose Strickman	1967	3,416.92
	1968	6,148.90
William W. Suitt ("Mr. Suitt") and Kathryn S. Suitt	1967	1,026.39
	1968	5,592.23
	1969	815.00
Robert S. Raum ("Mr. Raum") and Ruth Raum	1967	3,887.00
	1968	6,059.00
	1969	7,129.00

The trial was held before the Honorable C. Moxley Featherston, Judge of the United States Tax Court, on January 21, 1975. The Decisions of the Tax Court being appealed by the appellants were entered on June 30, 1976. Those Decisions were based upon a consolidated Opinion filed on December 2, 1975 (65 T.C. ____, No. 41). A Notice of Consolidated Appeals to this Court was filed on September 22, 1976.

The parts of the Tax Court Decisions being appealed by the appellants relate to:

(1) the Tax Court's failure to determine that 1967 transfers by Messrs. Raum, Rusoff, Strickman and Suitt of 50% of their respective interests in the Strickman Cigarette Filter to Columbia University were "gifts" which constituted charitable contributions within the meaning of Internal Revenue Code §170; and

(2) in the alternative, the Tax Court's failure to determine that if said transfers were "sales" Columbia received more than it "bought" and the respective excess transfers were "bargain sale" charitable contributions under Internal Revenue Code §170.

Facts

The Raums, the Rusoffs, the Strickmans and the Suitts were, respectively, husbands and wives at all times pertinent herein. Mrs. Raum is now deceased. T.C. Opinion, p. 4.*

At the time of the filing of the petitions with the Tax Court, the Raums were legal residents of the State of New York, the Suitts were legal residents of the State of Connecticut and the Rusoffs and the Strickmans were legal residents of the State of New Jersey. T.C. Opinion, p. 4. For purposes of determining venue on appeal, the parties have agreed pursuant to Internal Revenue Code §7482(b)(2) that there can be a consolidated appeal to this Circuit.

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*It should be noted that on October 15, 1976 this Court granted the motion of the Petitioners-Appellants for leave to dispense with the filing of an appendix.

Mr. Strickman is the inventor of the Strickman Cigarette Filter (Stip. ¶5), a filter which in July 1967 reduced inhaled tar and nicotine to "one-third or less" of the levels then attained by conventional filters (Ex. 29).

Mr. Strickman is an industrial and consulting chemist. He was born on New York City's East Side in 1911. He studied at the City College of New York, at New York University and at Los Angeles School of Diagnostic Technology. During the 1930's he worked at Bellevue Hospital, Harbor Hospital, Hillyer Junior College (as an instructor in Chemistry), East Hartford Hospital and his own private laboratory in Hartford. During World War II, he was a supervisor of medical laboratories for the War Department. Since then, he has been a director and co-owner of a number of private laboratories, a director of research, and a supervisor of research and development. (Ex. 32)

Mr. Strickman is President of Allied Testing and Research Laboratories in Hillsdale, New Jersey, a company composed of biologists, toxicologists, chemists and engineers which conducts analytical, microbiological and toxilogical tests for municipalities and corporations (e.g., it is the Medical Examiners' laboratory for Hudson County, N.J.). Over the years Mr. Strickman has delved into a broad spectrum of chemical research. His significant findings include the development of vinyl plastitol formulations for training aids for the U.S. Armed Services; a field testing kit (microbiological

and chemical) for health officers and sanitarians; refractory composite materials and new techniques for blood groupings on cards. His works have been widely published and he is editor of Henley's Encyclopedia of Formulas and Processes. He is a member of the American Chemical Society, the New York Academy of Sciences, the Chemist's Club of New York and the American Association for the Advancement of Sciences. (Ex. 32)

Both of Mr. Strickman's parents died of cancer. For that reason, in the late 1950's he began searching for a way to reduce the health hazards of cigarette smoking. (Ex. 30; Tr. 80, 81). He directed this research toward polymeric substances and his goal was a selective filtration composition which would reduce particulate matter (tars), nicotine and gas without reducing the natural flavor of tobacco (Ex. 32). His efforts were successful and the result was the Strickman Cigarette Filter. An application for a patent for the Strickman Cigarette Filter was filed on September 28, 1960. Continuations of that application were filed on January 11, 1965, December 6, 1966 and April 11, 1968. On November 9, 1971 United States Patent 3,618,618 was granted by the United States Patent Office for the Strickman Cigarette Filter. (Stip. ¶5; Ex. 11-K)

During the early years of the Strickman Cigarette Filter's development Mr. Strickman transferred undivided interests in the Strickman Cigarette Filter to many persons (the "Strickman Group"), including Robert Raum, William Suitt and Irving Rusoff (Stip. ¶6; Tr. 78, 79, 119).

The nation's need for a filter which could reduce the health hazards of cigarette smoking was vividly illustrated in 1964 when the widely publicized report of the Surgeon General's Advisory Committee was published (Ex. 31; See Tr. 8). Major findings of that report were (Ex. 31):

(1) Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action. The death rate for smokers of cigarettes is approximately 70 percent higher than that for non-smokers.

(2) Cigarette smoking is causally related to lung cancer in men; the magnitude of the effect of cigarette smoking far outweighs all other factors. The data for women, though less extensive, point in the same direction. The risk of developing lung cancer increases with duration of smoking and the number of cigarettes smoked per day, and is diminished by discontinuing smoking.

(3) Cigarette smoking is a significant factor in the causation of laryngeal cancer in the male.

(4) Cigarette smoking is the most important of the causes of chronic bronchitis in the United States. A relationship exists between pulmonary emphysema and cigarette smoking, but it has not been established that the relationship is causal.

(5) Male cigarette smokers have a higher death rate from coronary artery disease than non-smoking males, but it is not clear that the association has causal significance.

(6) Tobacco smoke tars contain many potent carcinogens. The total potency of the tars is forty times greater than that of any one of the known carcinogens present.

That report was followed by intense activity in this area by the Senate Commerce Committee and the Federal Trade Commission (See Tr. 8). The Federal Trade Commission urged that efforts be made to develop "less hazardous cigarettes" (Ex. 31).

Mr. Suitt had worked for the cigarette industry and he sensed that the invention was a "development" (Tr. 125). In early 1967 he turned to an attorney, Robert A. Katz ("Mr. Katz"), for help, advice and suggestions (Tr. 34, 125).

In the spring of 1967 Mr. Suitt took Mr. Katz to Mr. Strickman's New Jersey laboratory (Tr. 34, 125). Mr. Katz smoked a cigarette with the Strickman Cigarette Filter on it and had the uses and purpose of the filter explained to him in detail (Tr. 34). He analyzed reports prepared by Fitelson Laboratories (an independent testing laboratory used by Consumer's Union -- See Ex. 26-AN), estimated potential sales and concluded that the Strickman Cigarette Filter was "astronomical" (Tr. 126). Mr. Katz testified that he then (Tr. 34, 35):

> "recommended to Mr. Suitt and Mr. Strickman that they attempt to give it, retaining an interest for themselves, to an organization which would be more capable than they in dealing with tobacco manufacturers, cigarette manufacturers. And I suggested the Medical School at Columbia University, the College of Physicians and Surgeons at Columbia University." (Emphasis added)

Mr. Katz suggested that Columbia University ("Columbia"), a leading institution engaged in medical research, be the donee because a year earlier doctors from Columbia's Medical School had saved his son's life. The boy crashed through a storm window, fell to the pavement below and was critically injured. Columbia Drs. Tapley and Hagenson brought the boy to Columbia Presbyterian

Hospital for treatment, and saved his life. (Tr. 35, 80, 127). Mr. Katz was therefore grateful to the Columbia Medical School and he wanted them to be given an economic benefit (Tr. 35).

Mr. Suitt agreed to give part of his interest in the Strickman Cigarette Filter to Columbia (Tr. 128). His daughter had gone to Columbia and he therefore wanted to give it a gift (Tr. 131).

Mr. Strickman agreed to give part of his interest in the Strickman Cigarette Filter to Columbia (Tr. 80, 128). He believed that Columbia's assistance could aid in the reduction of suffering from cancer--suffering which his parents had endured. This belief caused him to readily accept Mr. Katz's recommendation (Tr. 80, 81, 128). In this connection, Mr. Strickman testified (Tr. 80):

> "I thought it would be a very good gift for the university, in view of the fact that this university--we would be helping people who were addicted to habit smoking."

Mr. Raum agreed to give part of his interest in the Strickman Cigarette Filter to Columbia (Tr. 62). He testified (Tr. 62):

> "It was suggested that we make a gift of approximately one-half interest in the invention to Columbia University and that idea appealed to me, knowing the University to be a fine institution. My late wife took her graduate studies there. I thought it was fine and I consented to it and wanted it to happen."

Mr. Rusoff agreed to give part of his interest in the Strickman Cigarette Filter to Columbia (Tr. 120, 121). He testified (Tr. 121):

> "I am a chemist by profession. I know the people at Columbia and I knew the director of the Nutrition--graduate Nutrition Area there. I thought that Columbia would be a good university to get a contribution of this nature."

Mr. Katz then informed Dr. Tapley that the Strickman Group wanted to give part of the Strickman Cigarette Filter to Columbia (Tr. 36, 37, 128). On April 20, 1967 Dr. Tapley informed William Bloor, Treasurer of Columbia University, of the "offer" (Ex. 26-AN). Meetings between members of the Strickman Group and Columbia officials were then held (Tr. 37; See Exs. AQ and AR). The Columbia University News Office reported these events in July 1967 as follows (Ex. 28):

> "The existence of Mr. Strickman's cigarette filter was brought to the attention of officers of Columbia University several months ago. Because of his desire to provide support for education and research, Mr. Strickman suggested that he give the rights to Columbia University, reserving for himself, over the life of the patent, a minority interest. Officials of the University advised Mr. Strickman that Columbia University could not accept the gift unless the filter could be offered to all cigarette companies, with no exclusive rights. Mr. Strickman readily agreed." (Emphasis added)

Columbia then had their own evaluation made of the Strickman Cigarette Filter. That evaluation showed the following results for 85 mm. cigarettes using an official Federal Trade Commission (Cambridge) test (Ex. 28):

Brand	Tars (Total Particulate Matter) mg/cigarette			Nicotine mg/cigarette		
	Commercial filter	Strickman filter	Reduction %	Commercial filter	Strickman filter	Reduction %
Kent	18.5	5.2	72	0.95	0.24	75
L & M	20.9	6.9	67	1.02	0.30	71
Lucky Strike	19.7	4.4	78	1.04	0.23	78
Winston (100 mm)	26.2	12.3	53	1.17	0.52	56
Camel	22.5	8.6	62	1.14	0.42	63
Marlboro	20.3	7.4	68	1.12	0.36	68
Lark	18.9	6.7	65	1.00	0.29	68
Viceroy	19.1	3.1	84	1.12	0.15	87
True	16.2	7.9	51	0.74	0.35	52
Marvel	8.6	3.7	57	0.25	0.13	48
Salem	21.5	2.8	87	1.07	0.11	90
Omega (cigar)	36.5	9.6	74	2.78	0.68	76

A series of pilot taste tests (comprising approximately 100 people) on leading brands of cigarettes were also performed for Columbia. Blind testing revealed that the typical smoker (3/4 of those tested) found his own brand of cigarette containing the Strickman Cigarette Filter to be equal or superior in taste to the same brand with its regular filter. After the completion of each blind test, it was explained to the person tested that one of the cigarettes had been his own brand with the tar content reduced to one-third of normal. Eighty-four percent expressed the desire to have their own brand available with the tar content reduced to that extent. (Ex. 28)

Mr. Bloor concluded that the Strickman Cigarette Filter might make millions of dollars for Columbia (Tr. 29). He thought that the obligations Columbia would have to assume as part owner were very small (Tr. 29) and he wanted the gift to Columbia to be made (Tr. 28, 174). Mr. Bloor then instructed Columbia's attorneys, Messrs. Thacher Proffit Prizer Crawley & Wood, to "put this transaction in legally acceptable form" (Tr. 174).

After the matter was referred to the attorneys, the completion of the gifts was considered "attorney handling from there on in" by the Strickman Group (Tr. 129). Mr. Katz represented the Strickman Group (Tr. 37) and Albert J. Cardinali and John W. Wheeler, both of the Thacher, Proffit firm, represented Columbia (Tr. 111, 155).

Albert J. Cardinali's understanding of the transaction was that a "gift" was being given to Columbia (Tr. 118).

John W. Wheeler believed that "the substance" of the transaction was that 51% of the Strickman Cigarette Filter was to go to Columbia and 49% was to stay with the Strickman Group (Tr. 173). He considered the conditions being assumed by Columbia (e.g., patent application prosecution, defensive litigation--Tr. 161) as "quite usual" for transfers to Columbia (Tr. 170). He understood that an additional test of the Strickman Cigarette Filter by one of Columbia's most eminent chemists, Dr. Ralph Halford, showed that the filter was "some 16% better than filters then on the market" (Tr. 168, 175).

On June 8, 1967 the percentage-ownership of the Strickman Cigarette Filter was divided among the Strickman Group as follows (Ex. 36; Tr. 58, 79):

Robert L. Strickman	17.501
Joseph E. Dorfman	13.727
Heiman G. Gross	8.882
Richard Heicklen	4.845
Manny Heicklen	4.180
Todd H. Cohen	4.180
Sidney A. Seidenberg	4.181
Robert S. Raum	4.180
Manesseh Elson	2.125
Ruth Kappel	2.018
Allied Testing & Research Company	2.000

William W. Suitt	12.500	
Robert A. Katz, as Trustee for William W. Suitt	1.500	
Melvyn Strickman	6.000	
Barbara Reiter	6.000	
Robert L. Strickman and Robert S. Raum as Trustees for Vincent Lisanti	4.181	
Anthony Venti	.500	(beneficial)
Edward Venti	.500	(beneficial)
Joseph Kitson	.500	(beneficial)
Irving Rusoff	.500	(beneficial)
	100.00	

On June 9, 1967 the members of the Strickman Group signed a Trust Agreement and a Supplement to the Trust Agreement, thereby ostensibly transferring their interests in the Strickman Cigarette Filter to Mr. Strickman and Mr. Raum as trustees. Mr. Strickman signed those documents on behalf of Mr. Rusoff (Tr. 123). Mr. Wheeler had insisted that the Strickman Group be aggregated (Tr. 173) and he and Mr. Katz agreed that the June 9, 1967 Trust Agreement should be employed for that purpose (Tr. 38, 173).

The June 9, 1967 Trust was a grantor trust which was a conduit for the gift of an interest in the Strickman Cigarette Filter to Columbia (T.C. Opinion, pp. 16-19, inclusive. See Tr. 38, 60, 61, 62, 82, 83, 120, 121, 130, 131).

Between June 9, 1967 and July 7, 1967 Mr. Katz considered the persons in the Strickman Group as the owners of the Strickman Cigarette Filter (Tr. 39). Correspondence during this period between Robert Strickman and Columbia and between officials of Columbia show that all concerned ignored the existence of the June 9, 1967 Trust (Exs. 27-AO, 34, 35).

On June 23, 1967 Mr. Bloor wrote the Assistant to the President of Columbia to suggest that a "thank you" letter be written to Robert Strickman by President Grayson Kirk (Tr. 23). Mr. Bloor's letter provided in pertinent part (Ex. 34):

> "Mr. Robert Strickman, the potential donor and inventor of a cigarette filter, is becoming restive due to the delays attendant upon the University's acceptance of the gift. It is Dr. Tapley's suggestion that a gracious letter of appreciation from Dr. Kirk will serve to quiet him and allow our attorneys the necessary time. An attempt is being made by a cigarette company to deal with him directly, and there is a possibility that this gift may be lost." (Emphasis added)

On that same day (June 23, 1967), President Grayson Kirk wrote the following letter to Robert Strickman (Ex. 35; See Tr. 26, 81, 82):

> "Dear Mr. Strickman:
>
> On behalf of the University Trustees, as well as on my own account, I am writing to tell you how excited and gratified all of us are over your generous gift to the University, arrangements for

which, as you know, are now in preparation. The size and complexity of this project will, of necessity, involve some slight delays, but we are making every effort to see that precise details are worked out as expeditiously as possible.

Meanwhile, I am sure you must derive a great measure of satisfaction from the realization that the product of your research will doubly benefit mankind--initially and directly through application of the filter, and again through financial aid to a great university whose function it is to serve mankind.

Sincerely,

Grayson Kirk"

(Emphasis added)

On June 27, 1967 President Kirk sent Columbia's Trustees a memorandum explaining the proposed gift. The memorandum stated in pertinent part as follows (Ex. 27-AO):

"The inventor of a cigarette filter, Mr. Robert Strickman, has offered to assign the invention to the University, under an agreement in which the University will assume various obligations. The University will also receive a share of the royalties which might be considerable, and of course there is also the possibility of complete failure. The obligations assumed are such that the Trustees may wish to comment.

<u>The invention will come to the University in part due to the help given to a child by a doctor at the Medical Center</u>. Tests have been performed on the filter under Medical School auspices, and the results do show it to be more effective than existing filters in the removal of tar and nicotine, while allowing the smoker to distinguish between brand flavors.

> It may be that the filter is sufficiently effective to find a very wide market. If this is so, and if the filter is adopted by the major cigarette companies in this country, total royalty payments will amount to many millions of dollars. The University's share would be 10% of the first $5,000,000 of royalties, the percentage increasing with the gross royalty receipts, until it reaches 51% above $25,000,000.
>
> An ad hoc committee of trustees has been established to deal with this matter, consisting of Messrs. Watt, Buttenwieser and Massie. They recommend that the risks be accepted.
>
> As to the obligations which the University will undertake, they include expenditures for satisfying itself that the invention is patentable, and in prosecuting its application, and in licensing the patent to cigarette manufacturers. There would also be an obligation to defend the patent in defensive litigation, and in prosecuting infringement in offensive litigation. Initial expenditures are estimated to be about $55,000." (Emphasis added)

On July 7, 1967, when (apart from the effect of the June 9, 1967 Trust) the percentage interests of Messrs. Rusoff, Strickman, Raum and Suitt in the Strickman Cigarette Filter were substantially the same as they had been on June 8, 1967 (Tr. 60, 95, 120, 139), three agreements were executed: an "Assignment Robert Strickman -to- Robert Strickman and Robert S. Raum, as Trustees" purportedly assigning all of Mr. Strickman's interest in the Strickman Cigarette Filter to himself and Robert Raum as trustees under the June 9, 1967 Trust for $1.00 and "other good and valuable consideration"

(Ex. 23-W); an "Assignment Robert Strickman et. al. -to- The Trustees of Columbia University in the City of New York" purportedly assigning the interest of the trustees of the June 9, 1967 Trust in the Strickman Cigarette Filter to Columbia for $1.00 and "other good and valuable consideration" (Ex. 24-X); and an "Assignment Agreement" among the trustees of the June 9, 1967 Trust, Mr. Strickman and the Columbia trustees which, among other things, states (Ex. 25-Y):

> "2.1 Assignors *** do hereby sell, ***
>
> ***
>
> 3.1 Assignee shall pay to the Assignors as compensation for the assignment of the Invention and other considerations expressed herein, the following percentage of net royalties received by it from the licensing of the patent and trademark rights:
>
> | | |
> |---|---|
> | Out of the first $5,000,000 | 90% |
> | Out of the second $5,000,000 | 80% |
> | Out of the third $5,000,000 | 70% |
> | Out of the fourth $5,000,000 | 60% |
> | Out of the fifth $5,000,000 | 50% |
> | Out of the sixth $25,000,000 | 49%" |

The words "sell" and "compensation" appear to have been inserted in the Assignment Agreement by Messrs. Katz and Wheeler to somehow generate capital gain treatment for the income they thought the members of the Strickman Group would be receiving because of their retained interests in the Strickman Cigarette Filter (Tr. 49, 51, 113, 159). Mr. Wheeler testified (Tr. 159):

> "I try to be helpful to the donor and in this connection, my recollection was that we did explore the possibility of capital gains treatment being granted ***"

Messrs. Rusoff, Raum, Suitt and Strickman intended the three July 7, 1967 documents (Exs. 23-W, 24-X and 25-Y) and the two June 9, 1967 documents (Exs. 19-S and 20-T) to transfer approximately one-half of their respective interests in the Strickman Cigarette Filter to Columbia (Tr. 62, 82, 83, 89, 120, 121, 130, 131, 144, 146). They wanted their transfers to be gifts to Columbia (Tr. 62, 72, 83, 89, 120, 121, 130, 131, 146) and they did not anticipate or contemplate that those gifts would ever be returned (Tr. 63, 84, 122, 132). Their intentions were consistent with the understandings of Messrs. Katz (Tr. 36), Cardinali (Tr. 113, 118), Bloor (Ex. 34) and Kirk (Ex. 35).

On July 13, 1967 the Columbia News Office issued the following press release (Ex. 29):

> "The rights to a revolutionary new cigarette filter, which reduces inhaled tar and nicotine to one-third or less of the levels attained by conventional filters, have been acquired by Columbia University. This announcement was made today by Dr. Grayson Kirk, President of the University, and by Dr. H. Houston Merritt, the Dean of Columbia University's College of Physicians and Surgeons. President Kirk announced that the University will make this filter immediately available in the United States and throughout the world. He expressed the hope that its use might lead to a significant lessening of one of the world's major health problems.

University spokesmen pointed out that, despite the report of the Surgeon General's Advisory Committee in 1964 that 'cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action,' cigarette consumption in America has actually increased. They further noted that public health and government officials believe it may be impossible to convince many people to stop smoking. For this reason the government has called for a major effort to make cigarette consumption itself less hazardous.

The new filter was invented by Mr. Robert Strickman, an industrial and consulting chemist, who eight years ago began his search for a filtration medium which would selectively filter out tar, nicotine and other particulate matter while leaving the full flavor of the tobacco. He described the filter as a new polymeric substance. It is non-toxic and made of materials readily available at low cost in the United States and most other countries. It can be adapted to meet the needs of any particular brand, and will not perceptibly increase the cost of cigarettes. Mr. Strickman emphasized that the unique feature of this highly effective filter material is that it allows the passage of the full flavor of the tobacco. Several independent taste tests have been conducted at the request of the University. These tests reveal that the typical user finds his own brand of cigarette with the Strickman filter to be at least equal in taste and more often superior to the same brand with its regular filter.

University spokesmen stated that the Strickman filter would be offered by license arrangement to cigarette marketing companies in the United States and abroad. The only restriction on its use will be that no licensee may use the filter if the filtered smoke has a tar content in excess of 10 milligrams as determined by the official Federal Trade Commission (Cambridge) test. (In independent laboratory tests of major brands, tars in filtered smoke were reduced from an average of 19.3 milligrams to 6.3 milligrams by use of the Strickman filter). The University

> acquired the rights to the filter at no cost. Mr. Strickman will retain, over the life of the patent, only a minority interest for himself. Any revenue realized by Columbia University will be used to support education and research. At Mr. Strickman's request, particular emphasis will be placed on medical and cancer research." (Emphasis added)

That afternoon a news conference was held and President Kirk's remarks included the following statements (Ex. 33):

> "*** Columbia sat down several months ago to discuss with Mr. Robert Strickman his generous offer to turn over to the University the rights to his invention of a new type of cigarette filter--one that after a series of tests under the auspices of our College of Physicians and Surgeons showed a dramatic reduction in the inhaled tars and nicotine when compared with conventional filters. It has been demonstrated that Mr. Strickman's filter is approximately three times more effective in reducing tars and nicotine than the filters now used with the leading cigarettes.
>
> After extensive discussions with Mr. Strickman, the Columbia Trustees voted to accept this transfer of the rights to the new filter. The formal agreement was signed last Friday. We are most grateful to Mr. Strickman for allowing the University to help in offering this great research advance to the world.
>
> We will now proceed to make this filter available immediately to any and every cigarette manufacturer, under licensing agreements, in the United States and throughout the world, with the sincere hope that its use may lead to a substantial lessening of one of the world's major health problems. I wish to emphasize strongly that the University will insist no licensee may use this filter if the filtered smoke has a tar content in excess of 10 milligrams, which is considerably less than the average content of all the cigarettes that were tested for us.

> Now, you may ask what, in addition to this hope of aid to mankind, does the University accomplish through this arrangement? At this point, we have no way of knowing if the tobacco industry will seek to take advantage of licensing agreements with the University to use the new filter. We have acquired the rights to this invention at no cost other than the obligations to pursue its patenting and licensing as its new owner. Over the life of the patent, Mr. Strickman will retain only a minority interest for himself. Any revenues realized by Columbia will be used to support education and research and, at Mr. Strickman's request, special emphasis will be placed on medical and cancer research. The University is convinced that, by this step, and as a consequence of Mr. Strickman's generosity, it may be able to make a substantial contribution to the health of the American people." (Emphasis added)

At all times relevant Columbia was an "educational organization" within the meaning of Section 170 of the Internal Revenue Code of 1954, as amended, and contributions to Columbia during 1967 were (i) deductible up to 30% of individual donors' adjusted gross incomes and (ii) eligible for Section 170's carry-over provisions (Stip., ¶13).

A R G U M E N T

ISSUE I

1967 transfers by Messrs. Raum, Rusoff, Strickman and Suitt of 50% of their respective interests in the Strickman Cigarette Filter to Columbia University were "gifts" which constituted charitable contributions within the meaning of Internal Revenue Code §170.

The Tax Court held that the 1967 transfers were not charitable contributions. That holding is based upon substantial errors of law and upon clearly erroneous findings of fact. An examination of the record leaves no doubt that "a mistake has been made". See United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948); Tulia Feedlot v. United States, 513 F.2d 800, 75-2 USTC ¶9522 (5th Cir. 1975).

Code Section 170(a) allows a deduction for a "charitable contribution", a term defined in Section 170(c) as "a contribution or gift to or for the use of" certain organizations.

Educational organizations are included among the Section 170 donees which cause contributions and gifts to qualify for "charitable contribution" status and the parties have stipulated that Columbia was an "educational organization", within the meaning of Section 170, at all times relevant (Stip. ¶13). Furthermore, it is not disputed that the appellants' interests in the Strickman Cigarette Filter were transferred to Columbia on July 7, 1967. Accordingly, the narrow issue is whether those transfers were "contributions or gifts".

If the transfers were "contributions or gifts", the appellants are entitled to deductions equal to the fair market value of their interests at the time of the contributions. Treasury Regs. 1.170-1(c)(1). In this connection, it should be noted that the IRS has ruled that the fair market value of an undivided interest in a patent given to an exempt organization is an allowable charitable deduction. Rev. Rul. 58-260, C.B. 1958-1, 126.

Several legal principles are significant: (1) it is not material that a patent has not been issued when its rights are transferred (See F. H. Philbrick, 27 T.C. 346 (1956), Acq. C.B. 1958-2, 7; M. P. Laurent, 34 T.C. 385 (1960)); (2) when an interest which passes to a charity could be defeated by a subsequent act or event, the occurrence of which appeared to have been highly improbable on the date of the gift, the deduction is allowable (Treasury Regs. 1.170-1(e). See Treasury Regs. 1.1235-2(b)(2)(ii)); (3) incidental benefits accruing to donors and partial motives other than a primary motive to benefit a charity do not defeat a charitable deduction (See Mo N. Scharf, T.C. Memo 1973-265, 32 TCM 1247 (1973); Citizens & Southern National Bank of S.C. v. United States, 243 F. Supp. 900, 65-2 USTC ¶9618 (W.D.S.C. 1965); Sedam v. United States, 74-1 USTC ¶9442 (S.D. Ind. 1974); MacKay v. United States, 74-2 USTC par. 9715 (10th Cir. 1974); Rev. Rul. 67-446, C.B. 1967-2, 119); and (4) the policy of Congress is to encourage gifts for charitable purposes (Estate of Jonathan Holdeen, T.C. Memo 1975-29, 34 TCM 129, 175 (1975)).

In Collman v. Commissioner, 75-1 USTC par. 9303 (9th Cir. 1975), where the Court of Appeals held that certain charitable gifts were allowable, the Court explained the importance of "intention" as follows:

> "It is well settled that the term 'charitable contribution' as used in section 170 is synonymous with the word 'gift'. DeJong v. Commissioner of Internal Revenue, 309 F. 2d 373 (9th Cir. 1962). A gift is generally defined as a voluntary transfer of property by the owner to another without consideration therefor. ***
>
> ***
>
> The critical consideration, therefore, in determining the existence of a statutory gift or charitable contribution is the transferor's intention. ***" (the emphasis is the Circuit Court's)

The Tax Court's ultimate factual holdings are clearly erroneous because they either completely ignored or casually rejected the overwhelming proof of donative intent. The donative intent of each of the male appellants, Mr. Katz's intent to benefit Columbia and the understanding of Columbia's counsel that a gift was intended are vividly illustrated by the following testimony by Messrs. Katz, Raum, Strickman, Rusoff, Suitt and Cardinali:

Mr. Katz (Tr. 34, 35):

"A *** I recommended to Mr. Suitt and Mr. Strickman that they attempt to give it, retaining an interest for themselves, to an organization which would be much more capable than they in dealing with tobacco manufacturers, cigarette manufacturers. And I suggested the Medical School at Columbia University, the College of Physicians and Surgeons at Columbia University.

Q Why did you suggest Columbia?

A Well, they -- a child of mine had an accident and I felt very grateful to what the faculty of the Medical School had done for this -- had taken place a little more than a year before the time in question.

Q They had done something extraordinary on your --

A Yes, I felt so.

Q What did you want Columbia to get out of this?

A I wanted Columbia to get a benefit. Any kind of a benefit.

Q And did you then tell --

A May I correct that? I wanted the College of Physicians and Surgeons to get an economic benefit.

Q You wanted them to be given something?

A Yes." (Emphasis added)

Mr. Raum (Tr. 62, 72):

"Q Why did you want to transfer one-half of your interest?

A It was suggested that we make a gift of approximately one-half interest in the invention to Columbia University and that idea appealed to me, knowing the University to be a fine institution. My late wife took her graduate studies there. I thought it was fine and I consented to it and wanted it to happen."

"A *** I never discussed terms or price or the form of the transfer or whether the various provisions of the eventual agreement which should be there or not, I left that all to Mr. Katz and my intention was to make the gift to Columbia University." (Emphasis added)

Mr. Strickman (Tr. 80, 83, 89):

"A *** Apparently, Mr. Suitt had spoken to Mr. Katz about the filter. At that time, I demonstrated the filter to him. I smoked some of the cigarettes and explained why it worked, et cetera. And at that point and time, he told -- we were just having discussions and he told me about his son having been treated by the College of Physicians and Surgeons at Columbia. He thought at the time that it would be a very nice gesture and a gift to a medical school, to the College of Physicians and Surgeons. And I -- well, when he explained it to me, I felt the same way, because both of my parents had died, and --

Q Take your time with this. Tell us --

A I thought it was a good gesture. And I went along with it. At that point, I thought it would be a very good

gift for the university, in view of the fact that this university -- we would be helping people who were addicted to habit smoking."

"A Well, I understood that we were making a gift to the university and that we were, in effect, making a gift of 50% of whatever we owned."

"A I don't recollect any kind of a purchase price. I thought that we were making a gift of 50% of our holdings at that time." (Emphasis added)

Mr. Rusoff (Tr. 120, 121):

"Q There's been a lot of talk today about Exhibit 19-S, this June trust agreement; Exhibit 20-T, a supplement to the trust agreement; Exhibit 23-W, an assignment, dated July 7; Exhibit 24-X, another assignment, dated July 7; Exhibit 25-Y, another assignment, assignment agreement. What was your understanding of these five agreements?

A It was my understanding that these five agreements were to give half of the interest of all the principals in the Strickman filter to Columbia University.

***

Q What did you think they were doing with respect to your interest?

A Well, I thought that --

Q Go on.

A Well, it was my impression that they were giving a contribution to Columbia University and I felt pretty good about that.

Q Why did you think it was something to feel good about?

A Well, I am a chemist by profession. I know the people at Columbia and I knew the director of the Nutrition -- graduate Nutrition Area there. I thought that Columbia would be a good university to get a contribution of this nature." (Emphasis added)

Mr. Suitt (Tr. 131, 143, 144, 146, 147):

"Q And we have in evidence five key documents, I believe. 19-S is this trust agreement; 20-T is a supplement to the trust agreement, which I believe that's your signature there also on 20-T, is that correct?

A Yes. That's my signature. When you say it's a supplement to the agreement --

Q It's labeled supplement to the trust agreement. And then on July 7, 1967, there are three agreements. There's 23-W, one assignment; 24-X, another assignment; 25-Y, an assignment agreement. Did you see a purpose for all of these documents? Did you think they were accomplishing something?

A I don't recollect that there were all this many.

Q The ones you do recollect, what was your --

A They're all part of the business of getting the gift transferred to Columbia from us to them. At least, that was my understanding.

Q Did you have any personal reasons for liking Columbia, that you wanted to help Columbia? Family connections?

A Well, my daughter went there and was in the school of general studies ***."

"Q But did you think you'd get some preferred rate on royalty -- on the royalty income, such as when you sell stock?

A No, Columbia would have eventually a take-over of this whole matter, and we wouldn't be recipients at all, but at the outset, we were to get some kind of a portion of it, because, supposedly, we only gave away half our holdings."

"Q What was your understanding of the nature of any interest you might have had in the Strickman Cigarette Filter after June 9, 1967?

A Well, that <u>half of it was going to Columbia as a gift</u>, and then I retained half of my interest.

Q You retained the other half.

A Right.

Q Did you really give any credibility at all to these various trust agreements, assignment agreements or did you really think they were pure conduits?

A Those were the matters of the attorneys and honestly, quite honestly, even my own business conduct, I do not read the archaic language of the law because I have grave difficulty understanding it. I have taught the English language and I still can't read legal documents, so --

Q So, you consider your interest as having a half interest --

A I'd given half as --

Q -- or having an interest in the invention directly and had given a portion of your interest away.

A Right. I had given half of my holdings to Columbia University." (Emphasis added)

Mr. Cardinali (Tr. 118):

"Q Now, when you were called into this, and I'm bringing you back now to the -- I guess, May '67 period, your understanding of this transaction was that it was a gift to Columbia wasn't it?

A Yes, that's correct." (Emphasis added)

Donative intent is further established by the following excerpts from two Columbia letters and Columbia's July 13, 1967 press release:

Mr. Bloor's June 23, 1967 letter (Ex. 34):

"Mr. Robert Strickman, the potential donor and inventor of a cigarette filter, is becoming restive due to the delays attendant upon the University's acceptance of the gift. *** there is a possibility that this gift may be lost." (Emphasis added)

President Kirk's June 23, 1967 letter (Ex. 35):

"Dear Mr. Strickman:

On behalf of the University Trustees, as well as on my own account, I am writing to tell you how excited and gratified all of us are over your generous gift to the University, ***." (Emphasis added)

July 13, 1967 Press Release (Ex. 29):

"The University acquired the rights to the filter at no cost. Mr. Strickman will retain, over the life of the patent, only a minority interest for himself. Any revenue realized by Columbia University will be used to support education and research. At Mr. Strickman's request, particular emphasis will be placed on medical and cancer research." (Emphasis added)

Ben I. Seldin, T.C. Memo 1969-223, 28 TCM 1215 (1969), involved another Government attempt to deny "contribution" status for a transfer to an exempt organization. In an analysis relevant to these cases, the Tax Court explained (pp. 1221, 1222):

> "The other issue for our decision is whether petitioners are entitled to charitable contribution deductions under section 170 resulting from the partnership's gratuitous conveyances of two parcels of land to the Millard and Omaha school districts, and if so, the amounts thereof.
>
> Respondent does not dispute that the school boards are organizations referred to in section 170(c)(1) and that the donated tracts are to be used for exclusively public purposes within the meaning of the aforesaid subsection.
>
> In an amendment to his answer, respondent stated that the transfers of land to the school districts do not qualify as charitable 'contributions' within the meaning of section 170. Respondent thus altered his prior position by totally disallowing petitioners' charitable contribution deductions rather than allowing the deductions at a value lower than claimed. As a result of the amendment to his answer, respondent has the burden of proof on the limited issue whether petitioners made a 'contribution' under section 170.
>
> Considering the evidence presented, we conclude that the partnership made 'contributions' to the school districts of Millard and Omaha within the meaning of section 170. ***
>
> It can be said that the presence of the schools at the center of their subdivisions attracted some home buyers to the area and as a result enhanced the values of surrounding commercial properties which the partnership held. However, to hold for such reason alone the conveyances of the partnership were not 'contributions' in these particular circumstances would stretch credulity. *** Furthermore, we would not disallow the deduction on the grounds that the partnership secured for its partners a greater after-tax benefit by casting the transaction as a donation rather than a sale."

The Tax Court's holding that Messrs. Rusoff, Raum, Strickman and Suitt did not "contribute" approximately 50% of their interests in the Strickman Cigarette Filter to Columbia is a similar stretch of credulity because of improper reliance upon four factors: (1) the form of the transfer documents; (2) events which occurred after the July 1967 transfer; (3) a mistaken view that one must intend to claim a deduction when one makes a gift and (4) the reversed Rainier Companies case.

Form

The Tax Court stated (T.C. Opinion, pp. 23-26, inclusive):

> "The July 7, 1967, assignment agreement itself reflects an arrangement for the mutual advantage of the parties, a quid pro quo, not a charitable contribution. The agreement provides that the trustees 'hereby sell, assign and transfer' (emphasis added) the invention to Columbia.
>
> ***
>
> As 'compensation for the assignment of the Invention and other considerations expressed' the Strickman group was to receive substantial and direct pecuniary benefits.
>
> ***
>
> The June 9, 1967, trust agreement executed less than a month before the agreement with Columbia does not even purport to authorize the trustees to make a gift of the trust property but, instead, empowers them to 'sell' the invention to Columbia or any of its designees. *** Every legal document executed in this whole transaction is phrased in the terms of a sale."

It has long been a principle of Federal tax law that the substance of a transaction, rather than its form, controls its Federal income tax consequences. Gregory v. Helvering, 293 U.S. 465, 35-1 USTC par. 9043 (1935). This principle applies to the Commissioner of Internal Revenue the same as it applies to taxpayers. Peerless Steel Equipment Co., T.C. Memo 1967-181, 26 TCM 880, 883 (1967). In Commissioner v. Court Holding Co., 324 U.S. 331, 45-1 USTC par. 9215 (1945), the Supreme Court explained the importance of substance as follows:

> "The incidence of taxation depends upon the substance of a transaction. *** To permit the true nature of a transaction to be disguised by mere formalisms *** would seriously impair the effective administration of the tax policies of Congress."

The substance of this case is that the use of the words "compensation" and "sell" in the July 7, 1967 Assignment Agreement and various memoranda does not establish that the transfer of the interests in the Strickman Cigarette Filter was a "sale" instead of a "gift". The great weight of the evidence establishes that (i) the relatively small obligations assumed by Columbia (e.g., prosecuting the patent application and infringement suits, defending the patent in defensive suits and licensing it to manufacturers) were for its benefit and were thus not a form of compensation; (ii) even according to Columbia's counsel, Mr. Wheeler, 51% of the

Strickman Cigarette Filter was to go to Columbia and 49% was to stay--i.e., not as compensation, but as the portion retained by the Strickman Group; and (iii) charitable "gifts", within the meaning of Code Section 170, were made on July 7, 1967.

Post-July 1967 Events

The Tax Court attempted to buttress its own view that there was not donative intent by stating:

T.C. Opinion, pp. 14 and 15

> "By early August 1967, sufficient doubts arose about the effectiveness of the filter to cause Columbia to suspend all licensing activities until further tests were conducted. At that time, Dr. Kirk was called to testify before a United States Senate subcommittee with respect to the filter and Columbia's role in promoting it."

T.C. Opinion, p. 25

> "The trustees gave notice of termination in mid-September 1967, less than 3 months after the agreement was signed--an action hardly consistent with a genuine donative intent."

The IRS had stressed these post-July 1967 events in its brief to the Tax Court and, as alleged support for its position, referred to a "Hearings" document which was not part of the record of this case (See T.C. Rule 143(b)). Appellants submit that (A) the Tax Court's reliance upon a document not in evidence and which was not even given to the Court or to appellants' counsel was highly improper,

(B) in any event, the "Hearings" document was hearsay, and (C) since so much reliance was obviously placed upon Dr. Kirk's alleged decision to delay licensing of the Filter, at least for that reason alone the case should be remanded so appellants can offer proof about the pressures and the sources of the pressures brought to bear upon Dr. Kirk during the summer of 1967.

The controlling legal principle is that when an interest which passes to a charity could be defeated by a subsequent act or event, the occurrence of which appeared to have been highly improbable on the date of the gift, the deduction is allowable. Treasury Regs. 1.170-1(e). Subsequent events, not established by anything in the record, and neither contemplated nor probable in July 1967 are not relevant and have no bearing upon the 1967 charitable contributions. De Witt v. United States, 74-1 USTC ¶9369 (Ct. Cl. 1974).

Intention

The record is replete with proof that appellants intended to give 50% of their respective interests in the Strickman Cigarette Filter to Columbia. However, the Tax Court apparently believed that intent to claim deductions is also required (T.C. Opinion, p. 27):

> "As far as we can tell from the evidence, the theory of a charitable contribution was an afterthought which was not conceived until after the mid-September notice of termination had been sent to Columbia, the spectre of the venture's failure was apparent, and, possibly, not until petitioners' 1967 returns were being prepared. This was too late." (Emphasis added)

Nothing in the record indicates whether the appellants intended to claim charitable contribution deductions when they made their July 1967 gifts. However, assuming arguendo that the Tax Court's "afterthought" speculation is correct, its holding that the timing would have been "too late" was an error of law. In Mason v. United States, 513 F.2d 25, 75-1 USTC ¶9318 (7th Cir. 1975), where the United States Court of Appeals recently held that a charitable contribution deduction was allowable for a bargain sale, the Court firmly rejected a similar erroneous contention as follows:

> "The [Government's] first argument fails to differentiate between the intent to make a gift--which must be present at the time of the transfer--and the intent to claim a deduction--which need only arise at the time a tax return is prepared. A taxpayer need not know at the time of making a gift that he is entitled to such a deduction. As the Supreme Court has stated, 'the parties' expectations or hopes as to the tax treatment of their conduct in themselves have nothing to do with the matter'. Commissioner v. Duberstein, 363 U.S. 278, 286. Accordingly, the fact that taxpayer may not have been aware of the possibility that he might obtain a tax deduction until after the transaction was consummated is irrelevant to the critical question whether he intended to confer a benefit on the charity at the time of the sale." (Emphasis added)

Rainier Companies, Inc.

The Tax Court's December 2, 1975 Opinion cited Rainier Companies, Inc. 61 T.C. 68, on pages 21 and 26 to support its ultimate holding. The Tax Court was apparently not aware that in a November 5, 1975 unpublished opinion the Ninth Circuit had reversed the Tax Court

and allowed a corporation a charitable deduction for its transfer of a baseball stadium to the City of Seattle, the purchaser of the underlying land.

Rainier had owned a baseball park in Seattle for many years. The City agreed to buy the land alone for $1,150,000 and Rainier then gave the City the stadium and other improvements. The Tax Court found that Rainier couldn't take a charitable deduction since it allegedly had no donative intent in transferring the stadium to the city. The Ninth Circuit held that all of the evidence supported Rainier's position that the gift of the stadium wasn't directed at greater salability of the underlying land. Both the president of Rainier and the Mayor of Seattle had testified that the stadium was given to the city so that baseball could continue in Seattle.

Rainier Companies, supra, should be followed in the case at hand. All of the proof in this case, from the appellants' testimony to Columbia's 1967 contemporaneous statements, established that the Tax Court's ultimate factual findings in this case are clearly erroneous.

ISSUE II

In the alternative, if said transfers were "sales" Columbia received more than it "bought" and the respective excess transfers were "bargain sale" charitable contributions under Internal Revenue Code §170.

"Bargain sales" were defined in Henry G. Burke's article, "Charitable Giving and Estate Planning", 28 Tax Lawyer 289 (Winter 1975) as follows (at p. 297):

> "Stated very simply and using as an example the form which such transactions took in the past, the donor would contribute appreciated securities to the charitable institution and be paid the cost of the securities or some lesser amount. The result of this kind of transaction was that the donor could recover in cash the cost of the security without the recognition of taxable gain and could obtain a tax deduction for the amount of the appreciation. *** Before the Tax Reform Act of 1969, if securities costing $4,000 and having a market value of $10,000 were sold to a charitable institution for $4,000, the donor recovered his full cost and was entitled to a $6,000 charitable deduction."*

Gladstein v. United States, 68-1 USTC par. 9197 (E.D. Okla. 1968), involved a "sale" of property to The Boys' Club of McAlester, Inc., a Section 501(c)(3) organization. The "sale" price was

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*The Tax Reform Act of 1969 requires post-1969 transferors to report a portion of the appreciation as capital gain. Section 1.170A-4(c)(2)(iii) of the Regulations under the Reform Act provides that:

> "The term 'bargain sale' *** means a transfer of property which is in part a sale or exchange of the property and in part a charitable contribution, as defined in section 170(c), of the property."

This definition is a codification of the clear doctrine of case law.

$25,000 and the fair market value of the property on the transfer date was $40,000. In holding that the excess was a charitable contribution the Court stated:

> "If a charitable contribution is made in property (other than money), the amount of the deduction is determined by the fair market value of the property at the date of the gift. *** A sale of property to an exempt organization accompanied by a donative intent on the part of the vendor may also give rise to a deductible charitable contribution in the amount of the difference between the sale price and the fair market value of the property sold. Magnolia Development Corp. v. Commissioner, decided August 31, 1960 (19 T.C.M. 934)."

Evidence establishing the appellants' donative intent is thoroughly examined in the preceding pages of this Brief. Thus, the question which remains for this alternative position is whether the present record adequately shows that the July 1967 value of the interests received by Columbia exceeded the alleged "sale price". The appellants believe that it does.*

The alleged "sale price" was the sum of the obligations assumed by Columbia (obligations which the appellants contend were for Columbia's benefit). Those obligations were quantified by President Kirk in his June 27, 1967 memorandum to Columbia's Trustees as follows (Ex. 27-AO):

---

*The valuation issue was severed from these cases when the Tax Court granted the Government's motion to sever on March 13, 1974. If this Court now concludes that valuation proof is needed (See Tr. 180), the appellants stand ready to provide such proof.

"As to the obligations which the University will undertake, they include expenditures for satisfying itself that the invention is patentable, and in prosecuting its application, and in licensing the patent to cigarette manufacturers. There would also be an obligation to defend the patent in defensive litigation, and in prosecuting infringement in offensive litigation. Initial expenditures are estimated to be about $55,000." (Emphasis added)

Mr. Bloor's testimony confirmed that the obligations were "very small" (Tr. 29):

"Q And you thought that if Columbia was paying anything, it was paying a very small amount?

A That is true."

President Kirk's memorandum to the Trustees stated that Columbia's share of the invention could be worth "many millions of dollars" (Ex. 27-AO):

"The invention will come to the University in part due to the help given to a child by a doctor at the Medical Center. Tests have been performed on the filter under Medical School auspices, and the results do show it to be more effective than existing filters in the removal of tar and nicotine, while allowing the smoker to distinguish between brand flavors.

It may be that the filter is sufficiently effective to find a very wide market. If this is so, and if the filter is adopted by the major cigarette companies in this country, total royalty payments will amount to many millions of dollars. The University's share would be 10% of the first $5,000,000 of royalties, the percentage increasing with the gross royalty receipts, until it reaches 51% above $25,000,000." (Emphasis added)

Mr. Bloor's estimate of the July 1967 value of Columbia's interest in the Strickman Cigarette Filter was consistent with the above projection (Tr. 29):

> "Q You thought Columbia might make millions, didn't you?
>
> A Yes, I did."

The record thus shows that the alleged "sale price" was infinitesimal when compared with the July 1967 value of the Strickman Cigarette Filter interests transferred to Columbia. Accordingly, if the 1967 transfers to Columbia are considered "sales", they were "bargain sales" which gave rise to charitable contribution deductions equal to the difference between the allocable shares of the relatively minute "sale price" and the respective values of the interests transferred to Columbia. See Singer Co. v. United States, 449 F.2d 413, 71-2 USTC ¶9685 (Ct. Cl. 1971); Mason v. United States, 75-1 USTC ¶9318 (7th Cir. 1975); William Waller, 39 T.C. 665 (1963).

It should be noted that at the conclusion of the Tax Court trial Judge Featherston advised the parties that he then believed that valuation testimony may be needed for the "bargain sale" issue (Tr. 180). Although appellants advised the Tax Court that they were ready to offer oral and written proof of value, nothing further was mentioned by the Tax Court and it virtually ignored this issue in its Opinion. That action by the Tax Court was a substantial error of law.

In conclusion, the appellants submit that at the very least there was a "bargain sale" because the record shows that Columbia thought that it was receiving something worth millions and assuming obligations estimated at $55,000 (Tr. 29; Ex. 27-AO). However, if this Court believes that proof of value is needed, the appellants are ready to submit such proof.

CONCLUSION

The relief requested by appellants is as follows:

1. Appellants request this Court to reverse Tax Court holdings with respect to the following issues so:

   a. the 1967 transfers by Messrs. Raum, Rusoff, Strickman and Suitt of 50% of their respective interests in the Strickman Cigarette Filter to Columbia can be claimed as charitable contribution deductions.

   b. in the alternative, if said transfers are considered "sales", the "bargain elements" of such sales can be claimed as charitable contributions.

2. Appellants request this Court to remand the case to the Tax Court with instructions to:

   a. receive evidence with respect to (i) relevant values; and (ii) the post-July 1967 pressures which were placed upon Columbia which forced it to abandon its interest in the Strickman Cigarette Filter.

   b. recompute the respective deficiencies.

Respectfully submitted,

November 15, 1976

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Certificate of Service

It is hereby certified that service of this brief has been made on opposing counsel by mailing two copies thereof on this 15th day of November, 1976, in an envelope, with postage prepaid, properly addressed to him as follows:

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